

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Rulemaking to Modify)

220 C.M.R. §§ 8.00 *et seq.*) D.T.E. 99-38

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**COMMENTS OF PG&E ENERGY SERVICES CORPORATION
ON PROPOSED REVISIONS TO 220 C.M.R. §§ 8.00 ET SEQ.**

These comments are submitted in response to the Notice of Proposed Rulemaking of the Department of Telecommunications and Energy (the "Department") dated April 27, 1999. PG&E Energy Services Corporation ("PG&E Energy Services") appreciates the opportunity to comment on the Department's Proposed Revisions to 220 C.M.R. §§ 8.00 *et seq.* which govern sales of electricity between small power producers and cogenerators (the "QF Regulations"). These comments are limited to an issue arising from the definition of "Distribution Company" found in Section 8.02 of the Proposed Revisions.

PG&E Energy Services is a retail energy services company. It is licensed as a Competitive Supplier of electricity with the Department and, in addition, provides its customers with billing and information management services, energy management products and services, and power quality management.

The existing QF Regulations unambiguously list the "affected utilities" to whom those regulations apply. 220 C.M.R. 8.02(2). Under the Proposed Revisions, however, the regulations would apply to a class of companies called "Distribution Companies." Proposed Revision 220 C.M.R. 8.01(2)(a). The Proposed Revisions define "Distribution Company," in pertinent part, as follows:

Distribution Company means a company engaging in the distribution of electricity to retail customers or owning, operating, or controlling distribution facilities

Proposed Revisions 220 C.M.R. 8.02. That definition is nearly identical to the definition of "distribution company" under G. L. c. 164, § 1, as amended by the Electric Industry Restructuring Act except that the definition in the Proposed Revisions adds the phrase "to retail customers."

PG&E Energy Services assumes that it is the Department's intent to have only regulated wires companies at the distribution level purchase power from QFs and on-site generation companies. However, the definition of "Distribution Company" in the Proposed Revisions is so broad that it may arguably be construed to include companies, such as PG&E Energy Services, which install and temporarily operate substations for retail customers as part of their bundle of energy services. Such a substation could theoretically be deemed a "distribution facility" under either the definition of that term in the Proposed Revisions⁽¹⁾ or under the definition of "distribution facility" in G.L. c. 164, § 1.⁽²⁾ Indeed, even end users themselves could conceivably fall under the definition of "Distribution Company" by virtue of their owning and/or operating and/or controlling a substation or other "Distribution Facility" for their own use. This definitional problem could create the unwanted result of burdening customers who happen to own substations with the duty to resell QF-generated power into the Power Exchange. Clearly, that is not what the Department intends.

PG&E Energy Services recommends that the Department amend the definition of Distribution Company in its Proposed Revisions by inserting after the phrase "means a company" the phrase "subject to regulation under G.L. c. 164, § 94 and." This amendment would serve to restrict the definition to include only "electric companies" which are subject to rate regulation by the Department. Such a restriction would exclude end use customers and energy services providers and marketers who happen to own, operate or control discrete pieces of equipment which may theoretically fall within the definition of "Distribution Facilities."

This definitional problem arises not only in this context but potentially in others. PG&E Energy Services therefore urges the Department to consider how best to address this problem on a broader basis as well as in the Proposed Revisions.

Respectfully submitted,

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1. Section 8.02 of the Proposed Revisions defines "Distribution Facility" as "plant or equipment used to deliver electricity to a customer that operates at a voltage level typically equal to or greater than 110 volts or less than 69,000 volts."

2. G.L. c. 164, § 1 defines "Distribution facility" as "plant or equipment used for the distribution of electricity and which is not a transmission facility, a cogeneration facility, or a small power production facility."